

Appl. No. 10/027,716  
Response Dated January 9, 2006  
Reply to Office Action of August 8, 2005

Atty. Docket No. 42P12870  
Examiner: Won, Michael Y  
TC/A.U. 2155

### REMARKS

Claim 1-19 remain standing in this application. Claims 8 and 11 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

While Applicant disagrees with the broad grounds of rejection presented in the Office Action, claims 8 and 11 have been amended in order to expedite prosecution on the merits.

At page 2, paragraph 2 claims 1-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number 6,700,890 to Langley et al. ("Langley") in view of United States Patent Number 6,904,020 to Love et al. ("Love"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

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As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-19. For example, claim 1 recites the following language, in relevant part:

using a list of probe values to probe for configuration  
information for said PVC.

As correctly noted in the Office Action, the above-recited language is not disclosed by Langley. According to the Office Action, the missing language is disclosed by Love at column 6, lines 29-34, lines 36-38, lines 63-67 and column 13, lines 56-59. Applicant respectfully disagrees.

Claim 1 defines over Langley and Love whether taken alone or in combination.

Love at the given cites, in relevant part, states:

The system comprises a plurality of measurement probes that passively monitor or observe data streams within the communications network. Each measurement probe passively observes and collects a set or sequence of data packets from one of the physical connections within the network. Love at column 6, lines 29-34.

Preferably each measurement probe collects a set of contiguous data packets. The set of data packets are collected during a specified time window. Love at column 6, lines 36-38.

In yet another example, the probes might be built into the logic circuitry of the nodes such that copies of raw data packets are fed to an output port on the node. A variety of different probes may be used on a single network as deemed appropriate. Love at column 6, lines 63-67.

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Under normal operation, the set of measurement probes connected to the physical links of a network is instructed to generate a synchronized set of data stream characterizations for the data streams that they observe. Love at column 13, lines 56-59.

Applicant respectfully submits that at the above citations Love fails to disclose “using a list of probe values to probe for configuration information for said PVC,” as recited in claim 1. Rather, Love arguably discloses “a plurality of measurement probes that passively monitor or observe data streams within the communications network.” Nowhere in the above citation does Love describe a list of probe values, let alone using the list of probe values to probe for configuration information for the PVC. Consequently, Langley and Love, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, Love mentions the word “list” only at column 10, lines 50-52 where Love discloses “an array could be constructed that listed the hash values observed in one column and the corresponding count in another.” Constructing an array that lists hash values is different from “using a list of probe values to probe for configuration information.” Additionally, the measurement probes of Love “passively” extract samples of normal data traffic. Love at column 4, lines 34-37. In contrast, the probes of claim 1 probe for configuration information as opposed to passively extracting information. Moreover, Love fails to mention or suggest the use of probes in connection with a permanent virtual circuit (PVC) as recited in claim 1. Therefore, Love fails to disclose, teach or suggest the missing language. Consequently, Langley and Love, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim

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1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 2-7 is respectfully requested. Claims 2-7 are non-obvious and patentable over Langley and Love, taken alone or in combination, at least on the basis of their dependency from claim 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Claims 8 and 14 recite features similar to those recited in claim 1. Therefore, for reasons analogous to those presented with respect to claim 1 above, Applicant respectfully submits that Love fails to disclose all the elements or features recited in claim 8 and claim 14. As such, the relevant part of Love is insufficient to remedy the deficiencies of Langley to establish a *prima facie* case of obviousness with respect to independent claims 8 and 14, as well as dependent claims 9-10 and 15-19. Applicant respectfully submits that claims 8-10 and 14-19 are allowable for at least these reasons. Accordingly, removal of the obviousness rejections with respect to claims 8-10 and 14-19 are respectfully requested.

Claims 11-13 also define over the cited references. As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. Claim 11, as amended, recites the following language, in relevant part:

Appl. No. 10/027,716  
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Atty. Docket No. 42P12870  
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to automatically send test packets using probe values from a digital subscriber line (DSL) device to a DSL access module (DSLAM).

As correctly noted in the Office Action, the above-recited language is not disclosed by Langley. According to the Office Action, the missing language is disclosed by Love at column 3, lines 23-32. Applicant respectfully disagrees. Love at the given cites, in relevant part, states:

Another automated network monitoring scheme involves actively injecting traffic with known characteristics into the network and monitoring the physical links within the network in order to discover the path or virtual connection over which the data travels. The injected traffic is generally test data with a known pattern that has a low probability of occurring in normal network operation. This scheme that uses 'active' probing of the network structure has the disadvantage of requiring access to the network to enable injection of the test data traffic.

Applicant respectfully submits that at the above citation Love fails to describe automatically sending test packets using probe values from a DSL device to a DSL access module, as recited in claim 1. Nowhere in the above citation does Love describe automatically sending test packets from a DSL device to a DSL access module. Rather, Love arguably discloses "actively injecting traffic with known characteristics into the network and monitoring the physical links within the network in order to discover the path or virtual connection over which the data travels." Consequently, Langley and Love, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 11. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to claim 11. Applicant also respectfully requests the removal of the obviousness rejection with respect to claims 12-13 which depend from

Appl. No. 10/027,716  
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Atty. Docket No. 42P12870  
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claim 11 and, therefore, contain additional features that further distinguish these claims from Langley and Love.

For at least the reasons given above, claims 1-19 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 1-19 is respectfully requested.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-19 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

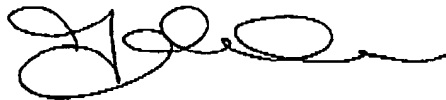
Appl. No. 10/027,716  
Response Dated January 9, 2006  
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Atty. Docket No. 42P12870  
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The Examiner is invited to contact the undersigned at 724-933-5529 to discuss  
any matter concerning this application.

Respectfully submitted,

KACVINSKY LLC



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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

Dated: January 9, 2006

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Deborah L. Higham

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